

Office Supreme Court.

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WM. K. STANSE

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No. 190

IN THE

SUPREME COURT OF THE UNITED STATES.

IN VACATION AFTER THE OCTOBER TERM, 1921.

BOARD OF TRADE OF THE CITY OF CHI-
CAGO, ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN, GEORGE S. BRIDGE
and JOHN R. LEONARD, partners, as Bridge
& Leonard, JAMES E. BENNETT, FRANK J.
SAIBERT, FRANK F. THOMPSON and
FRANK A. MILLER, partners, as James E.
Bennett & Co.,

Petitioners,

vs.

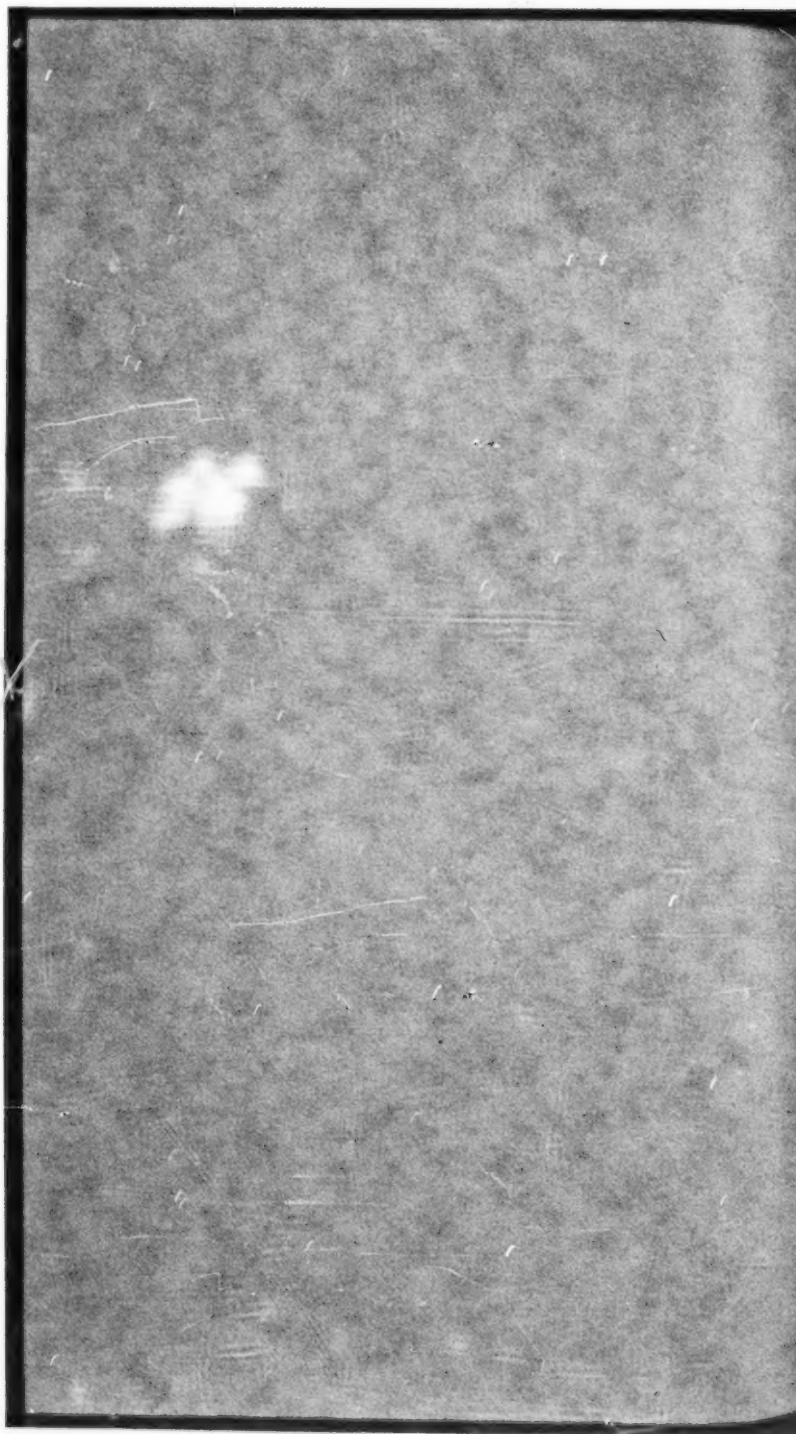
E. H. JOHNSON, trustee in bankruptcy of
Wilson F. Henderson,

Respondent.

PETITION FOR CERTIORARI.

HENRY S. ROBBINS,

Counsel for Petitioners.



IN THE

Supreme Court of the United States,

IN VACATION AFTER THE OCTOBER TERM, 1921.

BOARD OF TRADE OF THE CITY OF
CHICAGO, ARMOUR GRAIN COMPANY,
GEORGE A. HELLMAN, GEORGE S.
BRIDGE and JOHN R. LEONARD,
partners, as Bridge & Leonard, JAMES E.
BENNETT, FRANK J. SAIBERT, FRANK
K. THOMPSON and FRANK A. MILLER,
partners, as James E. Bennett & Co.,

Petitioners,

vs.

E. H. JOHNSON, trustee in bankruptcy of
Wilson F. Henderson,

Respondent.

PETITION FOR CERTIORARI.

*To the Honorable, the Judges of the Supreme Court of
the United States:*

The Board of Trade of the City of Chicago (hereinafter called the "Board of Trade"), and also the Armour Grain Company, George A. Hellman, and George S. Bridge and John R. Leonard, partners as Bridge & Leonard, James E. Bennett, Frank J. Saibert, Frank F. Thompson and Frank A. Miller, partners as James E. Bennett & Co., (hereinafter called the "co-petitioners"), respectfully represent that—

The Board of Trade maintains in Chicago a grain exchange under a special charter granted by the State of Illinois, by which it was given the right to admit or expel such persons as it may see fit in the manner to be pre-

scribed by its rules, regulations and by-laws, and also the power to maintain such rules, regulations and by-laws for the management of the business of its members, and the mode in which it should be transacted as the Board of Trade might think proper. (Rec., 17.)

Pursuant to this charter it has provided by rules (Rec., 10) that no person should be admitted to membership, unless his application shall be approved by at least ten of its eighteen directors. In lieu of the payment of an initiation fee of \$25,000, an applicant may tender an unimpaired and unforfeited membership duly transferred, and must sign an agreement with said Board of Trade to abide by its rules and all amendments thereto.

The Board of Trade has also provided by rule that any member may transfer his membership provided he is not indebted to any other member, and his membership is not in any way impaired or forfeited under its disciplinary power, and *the person to whom said selling member desires to transfer his membership shall be approved for membership by its Board of Directors.* (Rec., 10.)

Another rule provides that any member convicted of a failure to comply with any business obligation to any other member shall be suspended from all the privileges of the Board, until all his outstanding debts to all members shall have been settled. (Rec., 17.)

No corporation is admitted to membership, but its rules provide that, if two of the executive officers of a corporation are members in good standing, contracts may be made by the corporation on the Exchange, but that, if such corporation shall fail to comply with its business obligations to members of the Board, such executive officers shall be subject to discipline to the same extent as upon a failure to comply with any business obligation of their own. (Rec., 11.)

In November 1899, Wilson F. Henderson was elected a member of said Board of Trade and signed with it an agreement to abide by its rules; and at that time, all of the rules above mentioned were, and still are, in full force and effect.

For many months prior to March 1, 1919, Henderson was the president of Lipsey & Company, a corporation, which under the rules was entitled to contract in its own name on the exchange. The corporation transacted business on the exchange until March 1919, when it became insolvent, being then indebted to said co-petitioners (who are, and then were, members of the Board of Trade) in sums aggregating \$59,312. All of this indebtedness is still unpaid and constitutes, under said rules, outstanding unadjusted debts held by members, which—while remaining unpaid—rendered the Board of Directors incompetent to sanction the transfer of Henderson's membership, and made Henderson subject to suspension until all these debts were paid.

On the 24th of January, 1920, certain creditors of Henderson—Henderson being a resident of Chicago—filed in the District Court at Chicago a petition to have him adjudged a bankrupt (Rec., 6); and on the 24th of February, 1920, he was so adjudged, and respondent Johnson was on April 1, 1920, appointed his trustee.

Five days after this petition in bankruptcy was filed your co-petitioners being severally creditors of Lipsey & Company, filed with said Board of Trade their objections to the transfer of Henderson's membership (Rec., 12), by reason whereof its Board of Directors were debarred by the rules from sanctioning such transfer, or approving any person as a transferee of said membership, and such membership has never been transferred, and Henderson still remains a member.

After the institution of these bankruptcy proceedings, Bridge & Leonard, two of the co-petitioners and creditors of Lipsey & Company prior to the bankruptcy proceedings, instituted before the Board of Directors a proceeding, under the rule above mentioned, to have Henderson suspended from the Board of Trade by reason of the failure of Lipsey & Company to pay its said debt to Bridge & Leonard, which proceeding is still pending before said Board of Directors, by reason whereof the membership of Henderson is "impaired" within the meaning of the rule aforesaid. For this reason and because of the objections of co-petitioners to the transfer of the membership, the Board of Trade is under its rules without power to, and is unwilling to, transfer the membership of Henderson.

On the 10th of June, 1920, respondent, Johnson, filed in these bankruptcy proceedings a petition (subsequently amended) making the Board of Trade and these co-petitioners respondents, and an order was entered requiring your petitioners to show cause, why the membership of Henderson (alleged to have a value of about \$10,000) should not be transferred to Johnson as trustee for the benefit of said bankrupt's estate *free and clear of any objections or claims of said co-petitioners or of said proceedings by Bridge & Leonard to have said Henderson suspended.*

In response to this order, all of your petitioners filed pleas to the jurisdiction of the District Court, which set up the facts aforesaid, and claimed that the petition presented a "controversy in bankruptcy" as distinguished from a "proceeding in bankruptcy," of which the District Court ~~did~~ not have jurisdiction without the consent of your petitioners, and that none of your petitioners so consented.

The District Court overruled these pleas, and peti-

tioners, not waiving their said objections to jurisdiction, filed answers, in which they again set out the facts above mentioned.

Upon a final hearing upon the petition and answers (and without introduction of any evidence) the District Court entered a decree (Rec., 38) that said membership had passed, and belonged, to said trustee *free and clear of any claims or objections of said co-petitioners*, and said Board of Trade was ordered to refuse to recognize any of said claims of your co-petitioners as valid objections to the transfer of, or liens upon, said membership as against said trustee, and to ignore the proceedings of Bridge Leonard for the suspension of said Henderson, and to enter upon the records of said Board of Trade said Johnson, Trustee, as the owner of said membership, but for the purpose of sale only.

Your petitioners then filed in the Circuit Court of Appeals for the Seventh Circuit their petition to review and revise this decree, and also duly perfected their appeal from said decree; and in that court this petition and appeal were consolidated.

On the 13th of May, 1922, the Circuit Court of Appeals affirmed the decree of the District Court. (See Opinion Rec., 91.)

Your petitioners are advised by their counsel that a writ of certiorari should issue from this court to the Circuit Court of Appeals for the following reasons:

(1) That your petitioners were "adverse claimants" within Section 23 of the Bankruptcy Act, and that the Circuit Court of Appeals erred in upholding the jurisdiction of the District Court on the ground that petitioners were not such adverse claimants; and that thereby said court failed to apply the principle established by this court in *First National Bank v. Chicago Title &*

Trust Co., 198 U. S. 280, and other like cases. (See accompanying brief, pp. 2-4.)

(2) That, inasmuch as this record presents the question of the jurisdiction of the District Court, this court should issue, and in similar cases (*First National Bank v. Chicago Title & Trust Co.*, 198 U. S. 280; *Galbraith v. Vallely*, 256 U. S. 46) has issued, a writ of certiorari. (See further pp. 5-8 of brief in support of this petition.)

(3) That the Circuit Court of Appeals has established as the law of the Seventh Circuit (where the same question will frequently recur) that the institution of bankruptcy proceedings against a member of an exchange at once deprives the exchange of its power to subsequently discipline him for the non-fulfillment of his business obligations to other members, or other delinquencies, even when such debts have accrued, and delinquencies have occurred, *before* the bankruptcy proceedings; and that thereby that court has failed to give effect to the decisions of this court in *Hyde v. Woods*, 94 U. S. 523,—where this court held that the rule giving priority to exchange creditors “entered into and became an incident of the property [a membership] when it was created, and remains a part of it in whose hands soever it may come,”—and also in *Sparhawk v. Yerkes*, 142 U. S. 1,—where this court also held that a membership in an exchange is “limited and restricted by the rules of the association.”

(4) That the Circuit Court of Appeals erred in holding that, upon the institution of bankruptcy proceedings or the appointment of a trustee “the operation of the law passed the title [to the membership] to the trustee,” and that “Henderson ceased to be a member, and was of course not thereafter subject to discipline by the

Board," and in so holding that court ignored the decision in

Sparhawk v. Yerkes, 142 U. S. 1,

where this court held that the right of a trustee in bankruptcy of an exchange member was only the right to *elect*, within a reasonable time, whether to take the membership or not, thus placing the trustee, as respects a membership on an exchange, in the same position that he occupies respecting an unexpired leasehold.

(5) That the Circuit Court of Appeals erroneously construed Section 2, Rule X, of the Board (Rec., 10) as providing that, if creditor-members did not object *within ten days* after the posting of a membership for transfer, "the right to transfer becomes absolute *without action by the Board*," whereas under such rule creditor-members may object at any time before a completed transfer, and such rule expressly provides that a membership may be transferred only when the selling member produces a person "eligible to membership who *may be approved for membership by the Board of Directors*."

(6) That, as this record presents a question of the jurisdiction of the Federal Court, and discloses a failure of the lower courts to give effect to the decisions of this court, and as these erroneous decisions, if not corrected, will become authoritative in many subsequent cases where the same questions will recur, this record presents questions of such gravity and importance, as will justify the issuance of a writ of certiorari, to the end that Federal courts may be kept within their jurisdiction, and litigants in those courts may have the benefit of the decisions of this court.

Petitioners present herewith and make a part of this petition a certified transcript of the records of said consolidated case in said Circuit Court of Appeals.

WHEREFORE, YOUR PETITIONERS PRAY That this court issue a writ of certiorari to the United States Circuit Court

of Appeals for the Seventh Circuit, requiring it to certify said cause to this court.

BOARD OF TRADE OF THE CITY OF CHICAGO,
 ARMOUR GRAIN COMPANY,
 GEORGE A. HELLMAN,
 GEORGE S. BRIDGE,
 JOHN R. LEONARD,
 JAMES E. BENNETT,
 FRANK J. SAIBERT,
 FRANK F. THOMPSON,
 FRANK A. MILLER,

By HENRY S. ROBBINS,
Solicitor for Petitioners.

HENRY S. ROBBINS,
Counsel for Petitioners.

STATE OF ILLINOIS, }
 COUNTY OF COOK. } ss.

WALTER S. BLOWNEY, being first duly sworn, on oath deposes and says that he is Assistant Secretary of the Board of Trade of the City of Chicago, one of the petitioners in the above petition; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

WALTER S. BLOWNEY.

Subscribed and sworn to before me, this 27th day of July, 1922.

(Seal)

A. S. PAPENGUTH,
Notary Public.

SUP

BOAR
 CAC
 GEC

E.